



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/151160

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on August 22, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for occupational therapy (OT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Mary Chucka

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. Petitioner's primary diagnosis is autism. She receives intensive in-home therapy services.

3. On June 9, 2013, the Petitioner's provider, HealthReach Rehabilitation, submitted a PA request for OT services one time/week for 8 weeks. The goals in the Plan of Care dated 6/5/13 are:
 1. Petitioner will don overhead shirt with moderate to minimal assistance 3 of 4 trials.
 2. Petitioner will remain seated for 5 minutes to complete self care adults directed activity in 3 of 4 sessions without adverse reactions.
 3. Petitioner will demonstrate improved sensory processing as demonstrated by (a) allowing hand over hand assistance to brush teeth in 3 of 4 opportunities (b) respond to name and give eye contact to adult with minimal tactile cues in 3 of 4 opportunities.
 4. Petitioner will demonstrate bilateral hand use and distal hand strength and control/coordination with swinging 5 large beads and engaging 5 pop beads in 3 of 4 x's without adverse reactions.
4. The Petitioner attends the early childhood program in the Mukwonago School District and has an IEP for OT services during the school year.
5. On July 2, 2013, the agency denied the Petitioner's request for OT services.
6. On August 1, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.17(2)(b). When a PA is necessary, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 111.001.02, no. 3.

When determining whether a service is necessary, the agency must review, among other things, whether the service is medically necessary and an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1 and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 - ...
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.
 - ...

Wis. Admin. Code, § DHS 101.03(96m).

The Wisconsin Administrative Code has directions for when a PA is not to be approved for continuing services:

- (e) Extension of therapy services. Extension of therapy services shall not be approved in any of the following circumstances:

1. The recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period, or the recipient has shown no ability within 6 months to carry over abilities gained from treatment in a facility to the recipient's home;
- ...
6. Procedures considered by the department to be obsolete, inaccurate, unreliable, ineffectual, unnecessary, imprudent or superfluous; . . .

Wisconsin Admin. Code § DHS 107.18(3)(e).

The agency interprets the code provisions to mean that a person must continue to improve for therapy to continue. In addition, at some point, the therapy program should be carried over to the home, without the need for professional intervention. Finally the MA program will not pay for therapy if the person already receives therapy from a different provider.

The agency found this request for OT services did not meet these listed criteria and that the services are not, therefore, medically necessary as that term is defined by the Medicaid regulations.

Specifically, the agency asserts that the evaluation as submitted by the provider does not include sufficient information to conclude that the requested OT services are required for the member. It notes that the information indicates the Petitioner needs assistance with some self-care tasks in only general terms. It contends that there is no correlation of what specific deficit prevents the Petitioner from completing a self-care task. The agency notes that though the Petitioner's goals have changed somewhat in the time she received services from this provider, the documentation does not specify what the therapist did to contribute to any changes or what specific deficit will be targeted by the provider so the Petitioner becomes more independent. It notes there is no measurement of previous skills in the documentation and there is no current measurement of skills. In general, the agency contends the Petitioner's problems are not quantified or qualified in an objective manner and not correlated with what tasks the Petitioner is not able to do because of a specific problem.

The agency's written appearance states that the agency does not disagree that the Petitioner and her family may benefit from some OT services but what services and by what provider must be consistent with presenting concerns. The information provided with the PA request is insufficient to adequately evaluate the request. The agency asserts that the provider is obligated to document enough clinical information to justify why a skilled level of intervention is required at a requested frequency and duration.

I reviewed the information submitted by the provider and considered the information provided by the Petitioner's mother at the hearing. Based on that evidence, I must conclude that the agency is correct that the provider has not submitted sufficient information to determine whether the requested services, including the evaluation, are medically necessary. There is insufficient information regarding the Petitioner's specific deficits to be treated and whether OT services provided in the past have resulted in Petitioner making progress or improvement toward specific goals. Therefore, there is not sufficient information to determine if the requested services are appropriate.

CONCLUSIONS OF LAW

The agency properly denied the PA request for OT services, including the evaluation.

THEREFORE, it is **ORDERED**

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

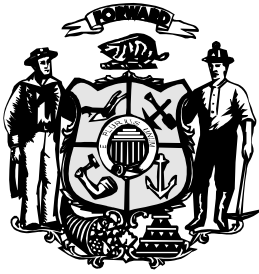
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 21, 2013.

Division of Health Care Access And Accountability